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In re Application of LUCHT et al
U.S. Application No.: 10/522,608
PCT Application No.: PCT/EP03/05545
Int. Filing Date: 27 May 2003
Priority Date Claimed: 29 May 2002
Attorney Docket No.: AFK-16214-WO-US
For: SAFETY BELT RETRACTOR
COMPRISING A PRE-TENSIONING
DEVICE

DECISION

This is in response to applicant's "Letter" filed 27 January 2005, which is being treated as a petition under 37 CFR 1.10(e).

BACKGROUND

On 27 May 2003, applicant filed international application PCT/EP03/05545, which claimed priority of an earlier Germany application filed 29 May 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 04 December 2003. The thirty-month period for paying the basic national fee in the United States expired on 29 November 2004.

On 24 November 2004, applicant purportedly filed national stage papers in the United States Designated/Elected Office (DO/EO/US) via the Express Mail Post Office to Addressee service of the USPS ("Express Mail").

On 27 January 2005, applicant filed the present petition under 37 CFR 1.10(e).

On 02 March 2005, applicant filed an executed declaration.

DISCUSSION

37 CFR 1.10(e) states,

Any person mailing correspondence addressed as set out in 1.1(a) to the Office with sufficient postage utilizing the Express Mail Post Office to Addressee service of the USPS but not received by the Office, may petition the

Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the Express Mail mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by Express Mail;

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the Express Mail mailing label thereon, a copy of any returned postcard receipt, a copy of the Express Mail mailing label showing the date-in, a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the date-in on the Express Mail mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the Express Mail Post Office to Addressee service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the Express Mail mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original Express Mail mailing label, returned postcard receipt, and official notation entered by the USPS.

With regard to item (1) above, the petition was filed promptly after applicant became aware that the USPTO has no evidence of receipt of the correspondence in question.

With regard to item (2) above, the Express Mail mailing label number appears on the copy of the correspondence.

With regard to item (3) above, applicant has provided a copy of the originally deposited papers and a copy of the Express Mail label showing a "date-in" of 24 November 2004.

With regard to item (4) above, the petition includes a sufficient statement that the correspondence was deposited on the date of notation by the USPS and that the copies of the correspondence and Express Mail mailing label are true copies of the originally mailed correspondence.


CONCLUSION

For the reasons above, the petition under 37 CFR 1.10(e) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 27 May 2003, and a date under 35 U.S.C. 371(c) of 02 March 2005.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including applying the

submitted funds towards the national stage filing fees in effect on 24 November 2004 and refunding any excess or charging any deficiency as appropriate.



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